he has cited in his cross-petition. In support of his allegations he said that he had heard about his wife's association with one Koh Teck Soon the 1st party cited and as for the 2nd party cited Tan Chan Huat he had seen him living together with his wife and one younger daughter in a flat in Singapore. The petitioner had denied all these allegations but having heard the evidence in this case I am satisfied that the respondent has on his part adduced sufficient evidence which conclusively proves that the petitioner has committed adultery with Tan Chan Huat the 2nd party cited but not against the 1st party cited.

The petitioner having proved cruelty against the respondent she would be entitled to a *decree nisi* but she has wilfully and deliberately suppressed the fact of her own adultery with the 2nd party cited which means that there is a discretionary bar to the matrimonial relief which she now seeks. Having herself committed adultery she should have prayed for the court's discretion in her petition and at the same time filed in court a discretion statement setting out all the facts relating to her adultery with the 2nd party cited in accordance with the Divorce Rules. This she has failed to do and in all the circumstances of the case I refuse to exercise my discretion in her favour and her petition is accordingly dismissed.

The respondent has proved adultery against the petitioner and he is therefore entitled to succeed in his petition as there is no bar to the relief he seeks. He is granted a *decree nisi* to be made absolute after three months.

The respondent has also prayed that the two parties cited be condemned by way of damages. However I do not propose to order damages against any of the party cited. The respondent has adduced insufficient evidence to establish adultery on the part of petitioner against the 1st party. He has however proved adultery by the petitioner against the 2nd party cited but on the evidence before me I find that the respondent was not altogether free from blame for having placed his wife in a position where she had an opportunity of having affairs with other men. The respondent was living in a flat in Jurong where no less than eight male persons were sharing a room on rent. It was within his knowledge also that the 1st and 2nd party cited were on more than friendly terms with the petitioner and at least one of them was his tenant. I therefore do not feel justified in ordering damages against the parties cited.

The petitioner and the respondent will bear their own costs. The petitioner does not seek custody of two of her children but would like to have custody of the third child as well as access to the two children who are now living with the respondent. These and other ancillary matters will be heard in chambers at a later date.

Order accordingly.

Solicitors: *N. Ramachandran & Co.; John Fernandez & Co.*

LIM KIM HOCK v. LEE AH KOONG

[O.C.J. (Yusoff Mohamed J.) December 11, 1979]
[Kuching — Civil Suit No. K.246 of 1973]

Tort — Detinue — Taxi purchased by plaintiff but registered in defendant's name — Claim for return of taxi or damages — Arrangement tainted with illegality — Whether claim allowed.

The plaintiff in this case was the driver of taxi KA6262 on August 20, 1973 when the defendant by his servants seized the taxi from him. The plaintiff had bought taxi No K4373 from one Tay on December 31, 1965 with the right to use the taxi permit issued in respect of that vehicle. Both the vehicle and the taxi permit were registered in the defendant's name. This arrangement was made because of the condition attached to the taxi permit that it was not transferable. Taxi K4373 was replaced with another taxi No. KA2611. This taxi was also registered in the defendant's name in order that the plaintiff could use it in accordance with the taxi permit issued to the defendant. In 1968 the plaintiff subsequently replaced taxi KA2611 with another bearing registration No. KA6262 which he had bought from Messrs Syn Chin Huat Hin. The said vehicle was also registered in the defendant's name following the previous arrangement.

The defendant submitted that he had sold the original taxi K4373 to Tay on April 26, 1965 with the right for the purchaser to use the taxi permit issued in his name. He said that because Tay had defaulted in paying the price of the said taxi, he had the right to take possession of the said taxi or any other vehicle which was subsequently replaced both by reason that he had not been paid for the price of the original taxi and the fact that the taxi was still registered in his name.

Held, allowing the plaintiff's claim: (1) the plaintiff had bought the original vehicle from Tay and he had no notice that Tay had not paid the defendant its value. He had acquired the said vehicle *bona fide* from Tay for value and in those circumstances he could claim ownership of the vehicle against the defendant;

(2) although the transaction was tainted with illegality, in order to overcome the condition imposed on the taxi permit, nevertheless, the transaction was fully executed and carried out and the property had been passed to him by the sale and delivery of the vehicle;

(3) as the owner of the vehicle the plaintiff had the right to its immediate possession at the right time of commencing the action; he was therefore entitled to the return of the taxi;

(4) since the taxi KA6262 had already been sold by the defendant, the plaintiff should be entitled to the value of the taxi at the sum of $4,300 which amount he had paid for;

(5) as to the damages for detinue, the income was earned by the plaintiff during the period of detention of the said taxi, derived from his illegal activity in running the taxi contrary to the condition imposed on the permit issued in respect of the vehicle. In law, he had not lost anything which was rightfully his and he was therefor not entitled to damages.

Cases referred to:-

(1) *Sajan Singh* v. *Sardara Ali* [1960] M.L.J. 52.
(2) *Scarfe* v. *Morgan* (1838) 4 M. & W. 270, 281.

CIVIL SUIT.

J.C. Wong for the plaintiff.

Maria Kana for the defendant.

Yusoff Mohamed J. (delivering oral judgment): The plaintiff's claim is for a declaration that he is the owner of taxi KA6262 and for the return of the said taxi or its value and damages, alternatively he also claims damages in detinue.

The evidence shows that the plaintiff was the driver of this taxi KA6262 on August 20, 1973 when the defendant by his servants seized the taxi from him.

The plaintiff produced evidence showing that he had originally bought taxi No. K4373 from one Tay Theng Kui on December 31, 1965 with the right to use the taxi permit issued in respect of that vehicle. Both the vehicle and the taxi permit were registered in the defendant's name, Lee Ah Koong. This arrangement was made because of the condition attached to the taxi permit that it was not transferable. The plaintiff also said that in effect he was the owner of the taxi having the vehicle in his possession, maintaining it and running it as his own.

Subsequently, the plaintiff replaced this taxi K4373 with another taxi bearing registration No. KA2611. This taxi was also registered in the defendant's name in order that he would have the right to use it in accordance with the taxi permit issued to the defendant. In 1968 the plaintiff again replaced this taxi KA2611, with another bearing registration No. KA6262 which he had bought from Messrs. Syn Chin Huat Hin. This vehicle was also registered in the defendant's name following the previous arrangement.

The defendant in his evidence said that he had sold the original taxi No. K4373 to Tay Theng Kui on April 26, 1965 with the right for the purchaser to use the taxi permit issued in his name. And in order to comply with the condition imposed on the permit, the taxi was to remain registered in his name. He said that because Tay Theng Kui had defaulted in paying the price of the said taxi, he had the right to take possession of the said taxi or any other vehicle which was subsequently replaced; both by reason that he had not been paid for the price of the original taxi and the fact that the taxi was still registered in his name.

Following *Sajan Singh* v. *Sardara Ali*[1] where the facts are almost similar, I am of the view that the plaintiff has shown that he was the owner of the vehicle KA6262 at the time when the proceeding in this action was instituted. He had bought the original vehicle from Tay Theng Kui and that he had no notice that Tay Theng Kui had not paid the defendant its value. He had acquired that vehicle *bona fide* from Tay Theng Kui for value and in those circumstances he could claim ownership of the vehicle against the defendant. Although the transaction was tainted with illegality, in order to overcome the condition imposed on the taxi permit, nevertheless, the transaction was fully executed and carried out and the property had been passed to him by the sale and delivery of the vehicle: see *Scarfe* v. *Morgan.*[2]

I am satisfied that the plaintiff was the owner of the vehicle and that he had the right to its immediate possession at the time of commencing the action. I therefore hold that the plaintiff is entitled to the declaration sought and the return of the taxi.

Since the defendant has sold the taxi KA6262 before the outcome of this proceeding, I order that the plaintiff is entitled to the value of the taxi at the sum of $4,300 which amount he had paid for the said taxi.

As to damages claimed in detinue, in my view the income was earned by the plaintiff during the period of detention of the said taxi, derived from his illegal activity in running the taxi contrary to the condition imposed on the permit issued in respect of the vehicle. And in my opinion his loss was not a legal loss; in law he has not lost anything which was rightfully his and he is therefore not entitled to this damage.

Costs to the plaintiff.

Claim allowed.

Solicitors: *Reddy & Co.; Chan, Jugah, Wan Ullok & Co.*

WONG KIM SWEE & ORS. v. THAM HOCK CHAM

[O.C.J. (Vohrah J.) January 17, 1981]
[Kuala Lumpur — Civil Appeal No. 22 of 1978]

Land Law — Qualified title holder — Restriction in qualified title — Land could not be leased without written approval of Collector for 10 years — Lease agreement for 6 years — Option to renew — Agreement not registered — National Land Code, ss. 206(3), 221, 222 & 225.

The plaintiffs were the registered owners of a two-storey shophouse in Kepong. In March 1971 they entered into an agreement with the defendant giving him a lease of the whole of the ground floor of the building for a period of 6 years commencing August 15, 1970. Clause 4(c) of the agreement provided for the defendant to have the first option to renew the lease for a period of 6 years at a reasonable rent to be mutually agreed upon. The agreement was not registered as required under section 222 of the National Land Code.

The plaintiffs' qualified title which was originally issued and registered on May 23, 1970 stipulated that the land on which the building stood could not be transferred, leased, tenanted, charged or otherwise disposed of without the written approval for the Collector of Land Revenue for a period of 10 years from the date of registration of the title so that this restriction on the face of the document continued up to and including May 22, 1980.

On June 7, 1976 the plaintiffs gave notice that they did not wish to renew or extend the lease and indicated that they would take vacant possession of the building on August 15, 1976. The defendant, however, on July 16, 1976 intimated his intention to exercise his option under Clause 4(c) to renew the lease for another six years. The learned President of the Sessions Court dismissed with costs the plaintiffs' claim for vacant possession of the shophouse and for special damages for its unlawful occupation. On appeal,

Held, allowing the appeal: (1) from the qualified title, the restriction which appeared on its face applied not to the approved application as such but to the title itself so that the provisions of section 225 of the National Land Code operated in this case. In this case the agreement was not in the prescribed form as required by section 221. On these facts alone the agreement could not have been registered and consequently was not enforceable under the National Land Code as not having vested an interest in the defendant. It was in fact void for being in breach of the Code;

(2) the defendant could not rely upon the provision contained in the void agreement as conferring upon him the right to exercise an option;

(3) the defendant could not also rely on the protection afforded by section 206(3) of the National Land Code since this subsection afforded protection only in relation to the term of a current agreement and does not extend to protect a right to enter into a future agreement.

Cases referred to:-

(1) *Ho Ying Chye* v. *Teh Cheong Huat* [1965] 2 M.L.J. 261.

(2) *Lee Lum Soh* v. *Low Ngah* [1973] 1 M.L.J. 97.